

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36379

STATE OF IDAHO,)	2010 Unpublished Opinion No. 585
)	
Plaintiff-Respondent,)	Filed: August 10, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSE H. JAUREGGUI-ARBALLO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. R. Barry Wood, District Judge.

Order denying motion to suppress, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

GRATTON, Judge

Jose H. Jaureggui-Arballo appeals from the district court's denial of his motion to suppress. We affirm.

I.

FACTUAL AND PROCEDURAL BACKGROUND

Jaureggui-Arballo entered a conditional guilty plea to trafficking in methamphetamine, Idaho Code §§ 37-2732B(a)(4)(C), 18-204, reserving his right to appeal the district court's denial of his motion to suppress. In Jaureggui-Arballo's motion to suppress, he contended that all evidence secured by the State as a result of a police interrogation should have been suppressed because he had invoked his right to silence. Jaureggui-Arballo timely appeals the district court's denial of his motion to suppress.

II. ANALYSIS

Jauregui-Arballo contends that the district court erred in denying his motion to suppress. He claims that, during the interrogation, he unambiguously and unequivocally invoked his right to remain silent and, thereupon, the interrogation should have ceased. The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, we accept the trial court's findings of fact that are supported by substantial evidence, but we freely review the application of constitutional principles to the facts as found. *State v. Atkinson*, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. *State v. Valdez-Molina*, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); *State v. Schevers*, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

The Fifth Amendment to the Constitution of the United States, which applies to the states by virtue of the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6 (1964), provides that a suspect subject to a custodial interrogation has the right to remain silent and refuse questioning, even if he initially waives that right. *Miranda v. Arizona*, 384 U.S. 436 (1966). "If the right to counsel or the right to remain silent is invoked at any point during the questioning, further interrogation must cease." *Berghuis v. Thompkins*, ___ U.S. ___ (2010). The United States Supreme Court has recently held that police may not reinitiate interrogation for a period of fourteen days. *Maryland v. Shatzer*, ___ U.S. ___ (2010). We have previously held that interrogation may not be reinitiated for a "substantial time." *State v. Robinson*, 115 Idaho 800, 803, 770 P.2d 809, 812 (Ct. App. 1989) (citing *State v. Blevins*, 108 Idaho 239, 697 P.2d 1253 (Ct. App. 1985)).

"An individual's right to cut off questioning is grounded in the Fifth Amendment and must be 'scrupulously honored.'" *State v. Law*, 136 Idaho 721, 724, 39 P.3d 661, 664 (Ct. App. 2002) (citing *Michigan v. Mosley*, 423 U.S. 96 (1975)). However, the invocation of the right to remain silent must be unambiguous and unequivocal. *Berghuis*, ___ U.S. at ___. The *Berghuis* Court recently held as follows:

In the context of invoking the *Miranda* right to counsel, the Court in *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994), held that a suspect must do so "unambiguously." If an accused makes a statement concerning the right to counsel "that is ambiguous or equivocal" or makes no

statement, the police are not required to end the interrogation, *ibid.*, or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights, 512 U.S., at 461-162, 114 S.Ct. 2350.

The Court has not yet stated whether an invocation of the right to remain silent can be ambiguous or equivocal, but there is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis*. See, e.g., *Solem v. Stumes*, 465 U.S. 638, 648, 104 S.Ct. 1338, 79 L.Ed.2d 579 (1984) (“[M]uch of the logic and language of [*Mosley*],” which discussed the *Miranda* right to remain silent, “could be applied to the invocation of the [*Miranda* right to counsel]”). Both protect the privilege against compulsory self-incrimination, *Miranda*, *supra*, at 467-473, 86 S.Ct. 1602, by requiring an interrogation to cease when either right is invoked, *Mosley*, *supra*, at 103, 96 S.Ct. 321 (citing *Miranda*, *supra*, at 474, 86 S.Ct. 1602); *Fare v. Michael C.*, 442 U.S. 707, 719, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).

There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that “avoid[s] difficulties of proof and . . . provide[s] guidance to officers” on how to proceed in the face of ambiguity. *Davis*, 512 U.S., at 458-459, 114 S.Ct. 2350. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused’s unclear intent and face the consequence of suppression “if they guess wrong.” *Id.*, at 461, 114 S.Ct. 2350. Suppression of a voluntary confession in these circumstances would place a significant burden on society’s interest in prosecuting criminal activity. See *id.*, at 459-461, 114 S.Ct. 2350; *Moran v. Burbine*, 475 U.S. 412, 427, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986). Treating an ambiguous or equivocal act, omission, or statement as an invocation of *Miranda* rights “might add marginally to *Miranda*’s goal of dispelling the compulsion inherent in custodial interrogation.” *Burbine*, 475 U.S., at 425, 106 S.Ct. 1135. But “as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process.” *Id.*, at 427, 106 S.Ct. 1135; see *Davis*, *supra*, at 460, 114 S.Ct. 2350.

Berghuis, ___ U.S. at ____.

Police are not required to cease questioning if the suspect’s comment is ambiguous or equivocal. *Law*, 136 Idaho at 724-25, 39 P.3d 664-65. Whether a suspect has unambiguously and unequivocally invoked his right to silence is based on the totality of the circumstances and viewed objectively, that is, how a reasonable police officer under the circumstances would view the statement. *State v. Whipple*, 134 Idaho 498, 504, 5 P.3d 478, 484 (Ct. App. 2000). In *Whipple*, this Court identified several factors to be considered in determining whether a suspect’s statement is a clear and unequivocal invocation of the right to remain silent:

These factors include the plain meaning of the suspect's words, the officer's response to these words, the suspect's speech patterns, content of the interrogation, demeanor and tone of the interrogating officer, the suspect's conduct during questioning, the point at which the suspect invoked the right to remain silent, the questions which drew the invocation, the officer's response and who was present during questioning.

Id. at 503, 5 P.3d at 483 (citing *State v. Arroya*, 988 P.2d 1124, 1132 (Colo. 1999)).

The portions of the interview that Jauregui-Arballo asserts to be an unambiguous and unequivocal invocation of the right to remain silent, and which were reviewed by the district court, are as follows:

Officer:	You don't want to be honest with me?! Why not?
Jauregui-Arballo:	No, no. It's not being honest. It's just that I want someone to help me!

Officer:	Did you talk to her?
Jauregui-Arballo:	You know what? My head hurts really bad. I can't . . . I can't keep going on with this.
Officer:	Yes. Did you talk. . . listen, well, I . .
Jauregui-Arballo:	Tomorrow. . . Let me sleep!
Officer:	I understand that your, your, your head hurts, yes.
Jauregui-Arballo:	Look, excuse me, excuse me. Show me the charges against me. Why I was arrested and all, and tomorrow I'll see who may help me or something because I can't. . . I can't. . . I can't anymore, I can't. . .

Officer:	Well. . . I know you know much more than you are telling me okay? And, well. . . uh. . . we can. . . uh. . . Do you know what D.E.A. is? Do you know who they are? D.E.A. - Drug Enforcement Agency? Okay? We can talk to them, and. . . and. . . and I think they, uh. . . would be willing to. . . work with you, but you need to be honest with me.
Jauregui-Arballo:	Mh-hm. Bring me the. . . the charges tomorrow and then, tomorrow I'll see what I do about this because like this. I'm not going to talk to you anymore. I have a bad headache.
Officer:	You do, yes. But they're serious charges.
Jauregui-Arballo:	Yeah, fine.
Officer:	Well. . . you're better off talking to me right now.
Jauregui-Arballo:	No, No, I don't have to, if I don't want to talk to you, I don't. . . don't. . . I don't have to talk. You got charges, bring them to me and that's it, period.
Officer:	Well, I already told you, I told you that. . . that. . . that we have the. . . that. . . that you were arrested for that.

Jauregui-Arballo: Mh-hm. Fine.
 Officer: Okay. You know? Well. . . And you. . . I'm going to tell you the truth. You are implicated in. . . in all of that, okay? In. . . in. . . drug trafficking. Do you see what I mean? Do you know what trafficking is?
 Jauregui-Arballo: Yes.

 Officer: Then, why. . . why won't you talk to me?
 Jauregui-Arballo: Because I don't. . . I don't want to get involved in stuff that's not my business.
 Officer: That doesn't make sense.
 Jauregui-Arballo: No. Besides, my head hurts a lot. I don't. . . I don't want to keep talking to you anymore.

The district court concluded that Jauregui-Arballo's statements did not constitute an unambiguous and unequivocal invocation of his right to remain silent. The district court noted that, in *Whipple*, the suspect appeared at the police station and, after making certain statements to a police officer, exclaimed "NO MORE, NO MORE." This Court held that the statement was not a clear and unequivocal invocation of the right to remain silent. *Whipple*, 134 Idaho at 503, 5 P.3d at 483. The district court also cited *State v. Payne*, 146 Idaho 548, 199 P.3d 123 (2008), in which the police officer asked Payne: "Is she still alive?" Payne answered, "I don't think I should answer that." *Id.* at 558, 199 P.3d at 133. The Supreme Court held that Payne's statement, "I don't think I should answer that," was not sufficiently clear such that a reasonable officer in the circumstances would understand it as an invocation of the right to remain silent. *Id.* at 559, 199 P. 3d at 134.

The district court also determined that the statements, read in the context of the whole interrogation, expressed only an unwillingness to discuss the matter at the present time, which is not an unambiguous invocation of the right to remain silent. The district court relied on *State v. Perez*, 145 Idaho 383, 179 P.3d 346 (Ct. App. 2008). In *Perez*, an officer questioned Perez and he stated that he would "rather wait." *Id.* at 387, 179 P.3d at 350. This Court held that the statement did not invoke his right to remain silent, explaining that:

This statement was not a clear indication that Perez was refusing to talk, but rather that he wanted to postpone the conversation. A statement that expresses only an unwillingness to discuss the matter *at the present time* is insufficient to constitute an unambiguous assertion of the right to remain silent because it leaves open the possibility that the suspect will be amenable to speaking with police at a future time.

Id. (emphasis in original). We agree with the district court's analysis. Jauregui-Arballo informed the officer that he had a headache and wanted to wait until the next day, stating, "My head really hurts bad. . . . I can't keep going on with this. . . . [t]omorrow . . . Let me sleep! . . . and tomorrow I'll see who may help me or something because I can't . . . I can't anymore." These statements do not convey a desire to exercise the right of silence. Jauregui-Arballo indicated that the officer should bring the charges and the officer brought up Drug Enforcement Agency involvement, to which Jauregui-Arballo again stated that the issue should wait until the next day, stating, "Bring me the . . . the charges tomorrow and then, tomorrow I'll see what I do about this because like this. I'm not going to talk to you anymore. I have a bad headache." The officer responded by telling Jauregui-Arballo that he would be better off talking to him at that time, indicating the reasonable understanding that Jauregui-Arballo simply wanted to talk at a later time. To which Jauregui-Arballo stated: "No. No, I don't have to, if I don't want to talk to you, I don't . . . don't . . . I don't have to talk. You got the charges, bring them to me and that's it period." While this statement, in isolation, may be viewed as an expression of Jauregui-Arballo's understanding of his right, it is not an unambiguous or unequivocal invocation of his right to silence. Thereafter, Jauregui-Arballo indicated that he did not want to get involved in someone else's business and, "[b]esides my head hurts a lot. I don't . . . I don't want to keep talking to you anymore." Again, Jauregui-Arballo stated that he didn't want to talk because his head hurt, which was his consistent complaint throughout this portion of the interview, and was the basis for the suggestion that the interview wait until the next day.

As the United States Supreme Court recently stated, "good reason" exists to require an unambiguous and unequivocal invocation of the right to silence. *Berghuis*, ___ U.S. at ___. Otherwise, "[i]f an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong. *Id.* (citing *Davis*, 512 U.S. at 461). Jauregui-Arballo's statements when considered under the totality of the circumstances, the factors identified in *Whipple*, and from the point of view of a reasonable police officer under the circumstances, do not constitute an unambiguous and unequivocal invocation of his right to silence.

III. CONCLUSION

Jauregui-Arballo did not unambiguously and unequivocally invoke his right to silence during the interview. The district court's denial of Jauregui-Arballo's motion to suppress is affirmed.

Judge GUTIERREZ, **CONCURS.**

Judge LANSING, **DISSENTING**

I respectfully dissent because I conclude that Jauregui-Arballo unambiguously and unequivocally invoked his right to remain silent, but interrogating officers ignored that invocation and continued with their questioning.

Even before the portions of the interview quoted in the majority opinion, Jauregui-Arballo began indicating a reluctance to continue the interview. Before the quoted portions, as the officer's questions began to approach matters giving rise to the charges, Jauregui-Arballo said:

Jauregui-Arballo: I can't say anything else. If there are . . . If I have charges or they have stuff against me and that, well then . . . well, I'll see who can help me because I don't want to . . .¹
Officer: Okay.
Jauregui-Arballo: To . . . say more about things that aren't . . .

Note that this statement does not refer to a headache or any prospect of continuing "tomorrow."

While I would not hold that this statement or some of Jauregui-Arballo's statements that followed, which are quoted in the majority opinion, constituted an unequivocal invocation of the right to remain silent, in my view his final statement quoted by the majority that "I don't want to keep talking to you anymore," certainly qualifies as such an invocation. If there is any doubt about that, it should be laid to rest by the next few lines that immediately follow, which are not referenced in the majority opinion. The officer continued:

Officer: No, no.
Jauregui-Arballo: If you would please, it's enough. It's fine like this.

¹ The transcriber who prepared a transcript of the recorded interview used ellipses to show where there appear pauses in the oral statements. Therefore, the ellipses used in my quotations merely reflect those in the transcript and do not indicate that I have omitted any contents of the transcript.

Officer: Okay. And I know you've been lying to me too. That story you've been giving me. I have evidence. So, that . . . that implicates you.

Jauregui-Arballo: Mh-hm.

Officer: That . . . says that, that im . . . implies you're guilty because you've been lying to me and you don't want to talk to me anymore. And, you want to keep it like that? Or . . . or . . . Do you want to start telling me the truth?

Jauregui-Arballo: *I'm not going to talk about anything with you. I told you already!*

Surely this is a sufficient, unequivocal invocation of one's right to remain silent. What more emphatic statement could be required is difficult to imagine.

In my view, the district court's determination, endorsed by the majority opinion, that Jauregui-Arballo's protests were only expressions that he "wanted to postpone the conversation," is not supported by the transcript. Jauregui-Arballo's first mention of reluctance to continue answering questions that I have quoted above says nothing about a headache or a willingness to speak with police tomorrow. Rather, it indicates, although not with clarity, a desire to get the assistance of counsel. He at no time stated a willingness to speak with the officers "tomorrow." He did, however, state that "tomorrow I'll see who may help me," and "tomorrow I'll see what I do about this. . . ." It appears that he was obliquely referencing a desire for the assistance of counsel.

Jauregui-Arballo's statements that "I don't want to keep talking to you anymore," and "I'm not going to talk about anything with you. I told you already!" are plainly stated invocations of his right to terminate the interview and are not at all similar to the ambiguous or tentative statements that were found insufficient in *State v. Payne*, 146 Idaho 548, 199 P.3d 123 (2008); *State v. Perez*, 145 Idaho 383, 179 P.3d 346 (Ct. App. 2008); *State v. Whipple*, 134 Idaho 498, 5 P.3d 478 (Ct. App. 2000), which are relied upon in the majority opinion. In my view, Jauregui-Arballo has demonstrated that his *Miranda* rights were violated by a police interrogator, and therefore his suppression motion should have been granted.